

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Assessment and Collection of Regulatory Fees for
Fiscal Year 2017

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MD Docket No. 17-134

ACCEPTED/FILED

DEC 18 2017

Federal Communications Commission
Office of the Secretary

REPLY COMMENTS OF AT&T SERVICES, INC.

AT&T Services, Inc., on behalf of its affiliates, ("AT&T") submits these reply comments on the changes to the Commission's regulatory fees for International Bearer Circuits ("IBCs") proposed by the Further Notice.¹ Under these proposals, the existing fee tiers used for international submarine cable system IBC regulatory fees would be revised and applied to all IBC capacity (*i.e.*, common carrier and non-common carrier terrestrial and satellite IBCs as well as submarine cable systems). Under an alternative proposal, all regulatory fees for IBCs would be replaced by a flat fee based on international section 214 authorizations.

AT&T supports revising the IBC fee tiers for submarine cables, which would take account of the substantial increases in submarine cable capacity since the current fee structure was adopted in 2009. AT&T also supports the adoption of a more competitively and technologically neutral fee structure for IBCs by applying the same revised fee tiers to terrestrial and satellite IBCs as well as submarine cable systems. Additionally, the concerns raised by SIA

¹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, MD Docket No. 17-134, FCC 17-111, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 7057, Sept. 5, 2017 ("Order" and "Further Notice").

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regarding potential adverse effects on smaller providers, which apply to all three types of IBC capacity, should be addressed by including lower fee tiers.

In contrast, the two-tier treatment of terrestrial and satellite IBCs advocated by CenturyLink and the alternative fee methodology based on international Section 214 authorizations, which is proposed by the Further Notice as a potential alternative to IBC fees, would be less efficient and equitable and more burdensome than the above proposals. A two-tier fee structure likely would provide large fee increases for terrestrial and satellite providers with small circuit volumes, while allowing those terrestrial and satellite providers with larger volumes to pay lower fees than submarine cable systems with the same capacity that are subject to a five-tier fee. The replacement of IBC fees with an international section 214 based fee would automatically and unjustifiably exempt non-common carrier operators from these fees thus effectively reversing the Commission's recent decision to apply these fees to all facilities-based operators. Both of these proposals should be rejected.

I. THE COMMISSION SHOULD ADOPTED A REVISED FEE STRUCTURE FOR ALL IBC CAPACITY

AT&T agrees with the Further Notice (§ 46) that the substantial growth of U.S submarine cable capacity since the existing IBC fee structure for submarine cables was established in 2009 supports updating this structure to reflect these changes. Commission data show a more than four-fold increase in this period based on reported capacity for 2015, and a more than six-fold increase based on the industry's planned capacity for 2017.² The five new fee tiers for submarine cable systems would be similar in effect to other regulatory fee structures

² See, 2015 U.S. International Circuit Capacity Data, Aug. 2017, Table 4(A) & 2009 Section 43.82 Circuit Status Data, Dec. 2010, Table 7A.

used by the Commission which “generally reflect [] higher fees for types of regulates that . . . are larger and have more customers.”³ AT&T also supports the proposed application of the same fee tiers to all IBC circuit capacity to provide a competitively and technologically neutral fee regime for common carrier and non-common carrier providers of terrestrial and satellite IBCs and submarine cable systems.

AT&T also believes that some modification of the proposed fee tiers is required to prevent adverse impacts on providers with small capacity volumes whose regulatory fees would significantly increase as the result of their adoption. In this regard, SIA (pp. 4-6) raises reasonable concerns regarding the potential adverse effects of these revised tiers on satellite providers, whose total combined IBC capacity is less than 7 Gbps. Similar concerns likely apply to providers with small volumes of terrestrial IBCs. Additionally, one U.S. submarine cable system has less than 2.5 Gbps of capacity so pays 6.25% of one payment unit under the present fee structure, but would pay the same amount (one payment unit) as cable systems with as much as 999.99 Gbps of capacity under the current proposal. Such outcomes would be mitigated, at least in part, by adding lower fee tiers, such as for 50%, 25%, and 12.5% of a payment unit, for corresponding lower amounts of capacity.

CenturyLink (pp. 2-5), continuing the advocacy of its recently acquired affiliate, Level 3, seeks to apply only a “two-tier system” to terrestrial and satellite IBCs, while supporting the proposed five-tier fee for submarine cable systems. In view of the wide disparities in satellite and terrestrial providers’ IBC circuit volumes as shown by the comments by SIA and other

³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd. 11662, ¶ 8 (2004).

available information,⁴ any two-tier fee structure is likely to require large fee increases for providers with the smallest volumes and thus raises similar concerns to those identified by SIA. In addition, CenturyLink's proposed two-tier IBC fee structure for terrestrial and satellite IBCs may allow terrestrial and satellite providers with larger capacity volumes to pay lower IBC fees than submarine cable systems with the same capacity that are subject to a five-tier IBC fee, because a five-tier fee structure likely would include higher fee levels than a two-tier fee structure. Thus, CenturyLink's approach would apply different fees to the same levels of IBC capacity provided over different facility-types, which would be discriminatory and inefficient, as well as being more burdensome for smaller providers of terrestrial and satellite IBCs.

Contrary to CenturyLink's argument (p. 4) in favor of its two-tier system that providers derive the same benefits from the Commission's activities regardless of the size of their IBC capacity, providers with more circuit capacity may provide larger volumes of services using that capacity and therefore derive greater benefits than providers with less capacity from commercial

⁴ See, *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, 30 FCC Rcd. 10268, Appendix B (2015) (Report and Order adopted on September 1, 2015 listing 21,900,000 IBC payment units) & *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, 30 FCC Rcd. 5354, Appendix B (2015) (Notice of Proposed Rulemaking adopted on May 21, 2015 listing 3,800,000 IBC payment units). Thus, more than 18 million additional IBC payment units were added to Commission totals after May 21, 2015, although providers were required to report their 2014 circuit totals under section 43.62 by April 30, 2015. See, Public Notice, DA 15-380, Mar. 27, 2015. See also, Comments of Level 3 Communications, MD Docket No. 16-166, at 2 (stating that in response to rule changes that "became effective in February 2015" and the new filing manual (dated February 2015), "Level 3 reassessed the number of terrestrial international bearer circuits (IBCs) it was required to report under section 43.62 of the Commission's rules," discussed its revised figures with Commission staff, and "[u]ltimately, as a result of that reassessment, Level 3 paid a huge, and hugely disproportionate given its relative industry position, share of the IBC terrestrial fee category for FY 2014").

opportunities that result from Commission activities.⁵ As noted, the regulatory fees for different services frequently provide higher fees for larger providers, and the Commission's proposed five tier fee structure for submarine cable systems, which CenturyLink (pp. 1-2) supports, follows this approach. CenturyLink therefore offers no valid basis not to apply the same five fee tiers to all three types of IBC capacity, but which should be modified as described above by adding lower fee tiers to mitigate potential adverse impacts on smaller providers.

II. THE PROPOSAL TO REPLACE IBC FEES WITH A FEE BASED ON INTERNATIONAL SECTION 214 AUTHORIZATIONS SHOULD BE REJECTED

AT&T also shares the concerns expressed by CTIA regarding the alternative proposal on which the Further Notice (§ 48) requests comment, which would replace either the terrestrial and satellite IBC fees, or all IBC fees (*i.e.*, on terrestrial, satellite and submarine cable capacity), with a flat fee on international section 214 authorizations. Such a fee would result in a less equitable fee system that would not be competitively neutral, because, by definition, this replacement fee would not apply to non-common carrier holders of IBC capacity (which are not required to hold section 214 authorizations) while all common carrier holders of this capacity (which are required to hold these authorizations) would be required to pay the new fee. The adoption of this proposal would thus effectively reverse the Commission's recently adopted decision in this

⁵ CenturyLink (p. 6) also fails to justify a two-tier fee as necessary to reduce compliance burdens or the under reporting of circuits. Under any tiered fee schedule, providers will need to review data to identify the appropriate fee tier and potentially could under report, but the likelihood that many (if any at all) would be willing to flout Commission rules to avoid required fee payments would appear to be very small.

proceeding to treat all facilities-based operators equally by “[a]dding non-common carrier terrestrial IBCs to the regulatory fee schedule.”⁶

Even where a non-common carrier holder of IBC capacity may hold a section 214 authorization, this authority may not be in use and readily could be surrendered to remove any exposure to regulatory fees levied on such authorizations. Thus, entities holding IBCs that “benefit from the Commission’s rulemaking, public information and international representational activities,” and therefore should pay regulatory fees because they “engage in international telecommunications,”⁷ would avoid such fees under this proposal.

At the same time, this proposal would impose a new regulatory fee on the hundreds of entities that hold international 214 resale authorizations and do not currently pay IBC fees because they do not hold IBC capacity or submarine cable landing licenses. As CTIA (p. 3) explains, international section 214 authorizations are not interchangeable with IBCs for other reasons as well, since many of the thousands of these authorizations listed in Commission records are facility, route or service-specific authorizations, or transfer of control authorizations, a significant number of which are no longer required by Commission rules or are otherwise not in use. CTIA (p. 5) also correctly observes that establishing and maintaining different fees for facilities-based and resale section 214s, or a “calibrated” section 214 authorization fee “based on size,” as the Further Notice (§ 48) suggests, would be a complex process that likely would impose greater burdens on Commission staff and service providers than the current or proposed IBC fees.

⁶ See, Order, § 35.

⁷ See, *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, 12 FCC Rcd. 171661, § 69 (1997).

CTIA (p. 2) further demonstrates that such a major change in the regulatory fees would not be a permitted amendment of the fee schedule under Section 9(b)(3) of the Communications Act because it would not reflect any change in law or regulation.⁸ While the growth of both common carrier and non-common carrier IBC capacity in response to the Commission's deregulatory and market-opening policies and activities supports the extension of IBC fees to these providers and the revision of the IBC fee tiers to reflect such capacity growth, no such changes support the replacement of the IBC fees with a fee based on section 214 authorizations.⁹ Indeed, removing regulatory fees from providers of non-common carrier IBCs and submarine cable systems, when those providers are deriving even greater benefits from Commission activities with the continued rapid growth of their capacity, would have the very opposite effect to that sought to be achieved by such an amendment, by denying the Commission regulatory fee revenues to defray those providers' proper share of the Commission's costs.

CONCLUSION

For the reasons stated above, the Commission should adopt its proposals to revise the five regulatory fee tiers for submarine cable systems and to apply those fee tiers to terrestrial and satellite IBCs in addition to submarine cable systems. The Commission also should add lower fee tiers to this proposed fee structure to mitigate the potential adverse effects of these changes on providers with small volumes of capacity. The Commission should not adopt the proposed two-tier fee structure for terrestrial and satellite IBCs or the proposed alternative fee

⁸ See also, *COMSAT Corp. v. FCC*, 114 F.3d 223, 225 (D.C. Cir. 1997).

⁹ See, *PanAmSat Corp. v. FCC*, 198 F.3d 890, 898 (D.C. Cir, 1999).

methodology based on international section 214 authorizations, both of which would be less efficient and equitable and more burdensome than the former proposals.

Respectfully submitted,

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